

ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT****KITSAP TENANT SUPPORT
SERVICES, INC.,****Petitioner,****v.****NATIONAL LABOR RELATIONS
BOARD,****Respondent.****Case No. 18-1187
18-1217****KITSAP TENANT SUPPORT SERVICES' REPLY**

The question before the court is whether the Board has jurisdiction to remand an issue that it severed from its May, 31, 2018 decision when it waited some seven (7) months after its decision and nearly four (4) months after the

record was transferred to the court, which gives this court exclusive jurisdiction. 29 U.S.C. § 160.¹

The practical result is to allow the Board to piecemeal the litigation that was before it for some four (4) years and further extend the litigation which began seven years ago with the filing of a charge (Doc. 1745836 p.24). That begs the question of whether the Board's decision of May 31st was a final order.²

It is the court's responsibility to interpret and apply the law, especially when it concerns the authority of administrative agencies. See *Marbury v. Madison*, 5 (1 Cranch) 137, 177 (1803) U.S. Constitution Article III.

The Board asserts that "...[it] is not without authority to continue its consideration of the severed handbook allegation..." (Memo in Opposition Doc. 1769244 p.4) but provides no authority to support the assertion. The Board's rules and regulations do not provide authority to sever matters (see: 29C.F.R. 102.49-.50) nor does the Administrative Procedures Act (5 U.S.C. § 500 et. seq.).

¹ It is interesting that the Board waited to issue the order remanding the matter until after KTSS' opening brief was due in this Circuit. (Doc. 1768096 pg. 13).

² "A final order of the Board...refers solely to an order of the Board either dismissing a complaint in whole or in part or directing a remedy". *Shell Chemical Co. v. NLRB*, 495 F.2d 1116, 1120 (5th Cir. 1974). If the Board can sever issues, how many "final orders" can there be and how will a party be assured that an order is actually a final order which is appealable. This would allow piecemeal litigation and added expense.

Here the Board's authority is clearly limited and the court's jurisdiction is exclusive once the record is transferred to the court. 29 U.S.C. § 160(c). The language is clear and underscored by the circuit's decision in *George Banta v. NLRB*, 686 F.2d 10, 16 (DC Cir. 1982). The NLRB lost jurisdiction of the case on August 30 and was unable to act absent a remand by this Court.

The Board skirts the issue of its unreasonable delay, choosing to ignore the issue and instead transfer blame to KTSS. It does not address the argument that the court will grant appropriate equitable relief to remedy the delay. *Cobell v. Norton*, 240 F.3d 1081 (DC Cir. 2001). The likely reason is that the Board cannot justify the pattern of lengthy and unreasonable delays.

KTSS requests the court confirm that it has exclusive jurisdiction and the Board lacks jurisdiction to proceed on the policy issue.

Date: January 25, 2019

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(b) of the Federal Rules of Appellate Procedure, I hereby certify that the textual portion of the foregoing brief (exclusive of the opening certificate, disclosure statement, tables of contents and authorities, certificates of service and compliance, statutory addendum but including footnotes) contains 463 words as determined by the word-counting feature of Microsoft Word.

Dated: January 25, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2019, on behalf of Petitioner Kitsap Tenant Support Services Inc., I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system, which will send notification of such filing to the following counsel:

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